

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YEDIDA KHADERA, et al.,

Plaintiffs,

V.

ABM INDUSTRIES INCORPORATED, et al.,

Defendants.

Case No. C08-0417 MJP

ORDER GRANTING CR 37 JOINT
SUBMISSION REGARDING
PLAINTIFFS' FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS
NOS. 1, 3, 5, 6, 14, 17, 21, 28, 29, 39,
AND 42; PLAINTIFF'S FIRST
INTERROGATORIES AND SECOND
REQUEST FOR PRODUCTION ROG
NOS. 3-7 AND RFP NOS. 1-8 and 10-
11; AND PLAINTIFFS' SECOND SET
OF INTERROGATORIES AND
THIRD REQUEST FOR
PRODUCTION ROG NOS. 1-3 AND
RFP NOS. 1-4.

THIS MATTER came before the Court upon the parties' CR 37 Joint Submission Regarding Plaintiffs' First Request for Production of Documents ("First Set") Nos. 1, 3, 5, 6, 14, 17, 21, 28, 29, 39, and 42; Plaintiffs' First Interrogatories and Second Request for Production ("Second Set") ROG Nos. 3–7 and RFP Nos. 1–8 and 10–11; and Plaintiffs' Second

1 Set of Interrogatories and Third Request for Production (“Third Set”) ROG Nos. 1–3 and RFP
2 Nos. 1–4. The Court has considered the Joint Submission, the Declaration and attached
3 exhibits in support thereof, and the files and records herein. Based on the foregoing, it is

4 **ORDERED:**

5 Plaintiffs’ CR 37 Joint Submission Regarding Production of Electronic Discovery is

6 **GRANTED.**

7 1. By July 1, 2009, Defendants shall produce all electronic mail responsive to the
8 following discovery requests based on the procedures outlined below:

Discovery Request Set and Number	Text of Discovery Request
First Set, No. 1.	All documents relating to complaints and grievances alleging violation of federal and Washington State wage or hour laws, including, without limitation, all charges or complaints filed against you internally or any state or federal agency, and all documents relating to any internal or external investigation of any such complaints or charges occurring in Washington during the Relevant Time Period.
First Set, No. 3.	All documents relating to policies and procedures regarding any of the following subjects: federal and state wage and hour laws, overtime, meal and rest periods, travel time and costs, time keeping, working off the clock, retaliation, and complaint procedures relating to wage and hour violations.
First Set, No. 5.	All employee manuals and handbooks of any kind, including, without limitation, the Code of Business Conduct.
First Set, No. 6.	All documents relating to any meeting attended by senior management or by any officers or directors of Defendants concerning any of the following: (1) compensation, access to overtime, hours worked, meal and rest periods of any nonexempt employee in Washington State; (2) any efforts to comply with federal and state wage and hour laws; and (3) any investigations relating to nonexempt employees employed by you in Washington concerning compensation and hours worked.
First Set, No. 14.	All documents reflecting work schedules for each of your Washington locations or work sites, during the Relevant Time Period, including, without limitation, practices for setting work schedules.
First Set, No. 17.	All documents relating to the provision of rest and meal periods at each ABM work site or location in Washington, including, without limitation, the locations and amenities provided at each work site for

1		these periods, and formal and informal communications relating to the provision of rest and meal periods during the Relevant Time Period.
2	First Set, No. 21.	All documents relating to the recordation of hours worked off the clock or “off duty” by employees within Washington during the Relevant Time Period.
3	First Set, No. 28.	All documents relating to any wage and hour audit conducted by a government agency, relating to any of your employees within Washington.
4	First Set, No. 29.	All documents relating to the defense, investigation, and/or settlement of wage and hour claims filed against you with or by the United States Department of Labor, Washington Department of Labor Standards Enforcement, any agency of a state or local government, or in any federal or state court relating to wage and hour claims against you by any and all employees within Washington.
5	First Set, No. 39.	All documents which pertain, constitute, reflect, or relate to any communications between and/or among ABM Industries Inc., ABM Co. - West, regarding any employment policies and/or practices; complaints regarding employment discrimination; complaints regarding unfair employment practices, including wage and hour violations; investigations; witness statements regarding employment discrimination; documents generated pertaining to any complaints of discrimination; documents generated and/or submitted to the EEOC regarding any and all charges of discrimination; documents generated or submitted to the U.S. Department of Labor and the Washington Department of Labor Standards Enforcement regarding any and all wage and hour claims.
6	First Set, No. 42.	All documents relating to ABM Industries Inc.’s Compliance Hotline as described in its Code of Business Conduct, including, without limitation, all documents relating to any calls made to this hotline and all documents relating to any internal or external investigation, whether formal or informal.
7	Second Set, ROG No. 3.	Identify any employee of your company (whether hourly paid or salaried, current or former) who has made any complaint against you referring or relating to wage and hour issues, including but not limited to the following: a. Not being properly compensated (including compensation for overtime work, work beyond scheduled hours, off-the-clock work, and travel time); b. Being reprimanded or disciplined for working overtime; c. Being reprimanded or disciplined for reporting overtime or off-the-clock work; d. Missing rest or meal breaks; e. Having deductions made to wages (including deductions for expenses related to uniforms, tools and transportation costs); f. Not being properly reimbursed for travel expenses including fuel; g. Having time records altered; or h. Any other allegation or claim set forth in the Complaint.
8	Second Set, ROG	Identify all resources that you make available to hourly paid employees to

1	No. 4.	raise or address wage or hour concerns or complaints, including telephone hotlines, e-mail addresses, web pages, surveys, forms, or questionnaires.
2	Second Set, ROG No. 5.	Identify all of your policies, procedures, practices, or methods for establishing, determining, revising, or adjusting estimates of time required for the completion of tasks assigned to employees.
3	Second Set, ROG No. 6.	Have you ever required or permitted an hourly paid employee to record a meal break on a time record even though the employee did not take the break? If so, identify or indicate for each such instance the following: a. The hourly paid employee who was required or permitted to record that a meal break was taken; b. The managers or supervisors who required or permitted the hourly paid employee to record that a meal break was taken; c. The date on which the hourly paid employee was required or permitted to record that a meal break was taken; and d. Whether the hourly paid employee was compensated for the missed meal break.
4	Second Set, ROG No. 7.	Have you ever required or permitted an hourly paid employee to record fewer hours than the employee actually worked, including overtime hours, hours worked beyond schedule, and off-the-clock hours? If so, identify or indicate for each such instance the following: a. The hourly paid employee who was required or permitted to record fewer hours than the employee actually worked; b. The managers or supervisors who required or permitted the hourly paid employee to record fewer hours than the employee actually worked; c. The date on which the hourly paid employee was required or permitted to record fewer hours than the employee actually worked; and d. Whether the hourly paid employee was compensated for the hours that were not recorded.
5	Second Set, RFP No. 1.	Produce all documents, including written policies and procedures, that refer or relate to any of the above Interrogatories.
6	Second Set, RFP No. 2.	Produce all documents, including written policies and procedures, to which you referred or on which you relied to respond to any of the above Interrogatories.
7	Second Set, RFP No. 3.	Produce all documents that refer or relate to any hourly ABM employee waiving, relinquishing, giving up, or compromising the right to receive compensation, including but not limited to overtime compensation, for hours worked.
8	Second Set, RFP No. 4.	Produce all documents that refer or relate to Defendants' overtime policies, including but not limited to documents that state overtime is never allowed or is not allowed without prior approval by management.
9	Second Set, RFP No. 5.	Produce all documents that refer or relate to Defendants' monitoring or tracking of overtime hours worked by hourly employees.
10	Second Set, RFP No. 6.	Produce all documents that refer or relate to employees being disciplined, punished, penalized, corrected or coached for incurring or recording overtime or hours worked beyond those for which they were scheduled.
11	Second Set, RFP No. 7.	Produce all documents that refer or relate to complaints, grievances or investigations arising from travel expenses, overtime, hours worked beyond scheduled hours, off-the-clock hours, rest and meal breaks, or the failure of supervisors or other managers to respond to prior complaints.
12	Second Set, RFP No. 8.	Produce all documents that refer or relate to any meeting attended by any managerial employee, including but not limited to shift leaders, foremen, route supervisors, district managers, and corporate officers, concerning

1		any of the following: a. Any policies, practices, or procedures identified in the above Interrogatory No.1; b. Any efforts to comply with federal or state wage and hour laws; and c. Any investigations or complaints concerning the wages of hourly employees, the hours worked by hourly employees, or reimbursements to hourly employees.
2	Second Set, RFP No. 10.	Produce all documents that refer or relate to Defendants' calculation of and reimbursement for travel expenses incurred by employees traveling between sites, including but not limited to fuel and vehicle usage.
3	Second Set, RFP 11.	Produce all documents that refer or relate to Defendants' travel time policies, including but not limited to any documents that state travel time to clientsites is not included in the calculation of labor hours and any documents that state rest or meal breaks are to be taken during travel time.
4	Third Set, ROG 1.	Do you compensate hourly employees for travel time? If the answer is "Yes," please provide the following information: (1) Explain how you calculate such compensation, including the rate of pay, and whether such compensation is paid by the mile or by the hour, if at all; and (2) Identify any policies that refer or relate to how you compensate hourly employees for travel time.
5	Third Set, ROG 2.	Have you or your managers ever directed or instructed hourly employees to take their meal or rest breaks during travel time? If so, provide the following information: (1) Identify who made such a directive or gave such an instruction; and (2) Identify every hourly employee to whom such a directive or instruction was provided.
6	Third Set, ROG 3.	Have you or your managers ever altered, amended or modified an hourly employee's time card for the purpose of reducing the total hours worked to a number equal to the hours the employee was scheduled to work? If so, please provide the following information: (1) Identify who made such an alteration, amendment or modification; (2) Identify every hourly employee whose time card was altered, amended or modified.
7	Third Set, RFP 1.	Produce all documents, including written policies and procedures, that are identified in or refer or relate to any of the above Interrogatories.
8	Third Set, RFP 2.	Produce all documents, including written policies and procedures, to which you referred or on which you relied to respond to any of the above Interrogatories.
9	Third Set, RFP 3.	Produce all documents, including written policies and procedures, that relate or refer to payment or non-payment for travel time.
10	Third Set, RFP 4.	Produce all documents, including written policies and procedures, that relate or refer to the alteration, amendment or modification of hourly employee time cards.

24 2. Defendants shall search the live and restored electronic data of the custodians
 25 identified on Ex. A to this Order using Plaintiffs' proposed search terms identified on Ex. B to
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this Order and shall produce all non-privileged or protected documents that the search generates, including the metadata fields identified on Ex. C to this Order, in .NSF native form;

3. Defendants shall disclose to Plaintiffs all sources of live and restored data being searched and how the data is being processed, including but not limited to whether it is being processed in a manner that preserves metadata;

4. Defendants shall disclose to Plaintiffs whether Defendants have suspended their document destruction policies, and if so, when; and

5. Each party shall bear their own costs associated with the underlying CR 37 submission.

DATED this 27th day of May, 2009.

Marsha J. Pechman
Marsha J. Pechman
United States District Judge